

REMARKS

Claims 1-16 are now pending, with claims 1 and 3 being the independent claims. The Specification has been amended to claim priority from U.S. Provisional Application No. 60/276,287 which was filed on March 15, 2001. A substitute Declaration is submitted herewith which includes the domestic priority claim. Claims 1 and 4 have been amended. Support for the amendment to claim 1 may be found at pg. 8, lines 18 of the originally filed specification. Claims 5-16 have been added. No new matter has been added. Reconsideration of the application, as amended, is respectfully requested.

Claims 1-4 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,005,926 ("*Mashinsky*"). For the reasons which follow, it is respectfully submitted that all claims of the present application are patentable over the cited reference.

Applicant's claimed invention includes a system and method for generating, monitoring and reporting performance information related to the transmission and reception of data communications between at least two parties. The data communications may comprise voice, video, hyper-text transfer protocol (HTTP) and/or other types and protocols of data. In one embodiment, the data transmissions are telephone calls, and may be typical public-switched telephone network (PSTN) calls, or may be Voice over Internet Protocol (VoIP) calls. In some instances, the data communications may relate to business transactions that involve interactive and time-sensitive material. The performance information may include information relating to the level of customer service offered by the terminating party or a network service provider facilitating the data communication (see pg. 8, lines 1-11 of the originally filed specification).

In other embodiments of the claimed invention, the system may include a central controller in communication with at least one originating party, at least one network service provider and/or at

least one terminating party. Here, the central system receives a data transmission from the originating party, routes the data transmission to a network service provider, monitors performance information relating to the transmission of the data, and generates reports detailing the performance of the terminating parties and/or network service providers (see pg. 8, lines 12-18 of the originally filed specification).

In contrast, *Mashinsky* relates to a system and method for flexibly routing communications transmissions in an efficient manner (see col. 2, lines 16-18). *Mashinsky* (Abstract, lines 2-4) states, “service providers submit information comprising cost and service parameter data to a centralized server node”. *Mashinsky* (Abstract, lines 4-8) further states, “the server node evaluates the information and generates a rate-table database comprising efficient routing paths for connecting transmissions between any two locations in a communications switching network”.

The Office Action (pg. 2, paragraph 4) states:

Mashinsky clearly teaches the method and apparatus for monitoring and reporting performance information relating to data transmission, comprising:

Receiving an electronic data transmission addressed to a network service provider (See *Mashinsky* column 2, lines 16-30 and 44-48, column 3, lines 60-68)....

With respect to the foregoing statement, however, Applicant respectfully asserts that *Mashinsky* fails to teach the invention recited in amended independent method claim 1. Specifically, *Mashinsky* fails to teach the claimed monitoring and generating steps of amended independent method claim 1. *Mashinsky* (col. 2, lines 18-21) states, “service providers submit information to a centralized server node which comprises cost and service parameter data for routing a communication from a first location to a second location”. Hence, *Mashinsky* teaches that data is sent from a service provider and received at a centralized node.

However, amended independent claim 1 recites the steps of “monitoring at the processor a portion of the data transmission while the data transmission is in progress; and generating at the processor performance information associated with the data transmission based on the monitored data transmission”. *Mashinskyi* fails to teach this limitation.

Mashinsky (col. 2, lines 44-48) states, “the server node administers all aspects of the network including authentication of carriers, risk management, financial transactions, settlement, and contract management, and tracking of the physical links connecting different portions of the network”. This section of *Mashinsky* fails to teach Applicant’s claimed monitoring and generating steps that are performed at the processor, as recited in amended independent claim 1.

Mashinsky (col. 5, lines 57-64) teaches that a three step process is performed to determine cost-efficient routing paths for calls connected via an international gateway network. *Mashinsky* (col. 5, lines 57-64) states, “in step (1), the system collects rate information from international carriers around the world”. *Mashinsky* (col. 5, line 65 thru col. 6, line 3) teaches that the rate information can include pricing information, as well as call-volume capacity and service related particulars, such as quality, reliability and security of the transmission. However, this rate information is entered by a carrier. The rate information is not generated by the server based on a monitored data transmission. Thus, *Mashinsky* teaches that data related to call rate and performance is entered by a carrier and then provided to the system.

In contrast, amended independent claim 1 recites the step of “generating at the processor performance information associated with the data transmission based on the monitored data transmission”. The claimed performance information relates to information associated with a call, such as how long a call was on hold, whether the call was dropped or who was responsible for the call (e.g., the network service provider or the terminating party) (see, e.g., pg. 11, lines 13-17 of the

specification). *Mashinsky* fails to teach this aspect of the claimed invention, as recited in amended independent claim 1.

Mashinsky (col. 6, lines 7-9) states, “carriers ... enter rate information via a template 300 which may be accessed at a world-wide-web site maintained by server node 56. Alternatively, carriers who own and maintain international gateway switches, such as switches 22, 26, and 28, or who own and maintain a node 44-48, may transmit rate information to server node 56 via telecommunications nodes 44-48.” Thus, *Mashinsky* teaches that the carriers enter all call related data. However, the claimed invention calls for the generation of performance information at a processor associated with the data transmission based on a monitored data transmission. *Mashinsky* fails to teach this claimed feature.

Mashinsky (col. 8, lines 47-53) teaches that a second step is performed after the system collects rate information from carriers around the world regarding cost and service parameters of routing various classes of calls from a first location to a second location. Thus, *Mashinsky* teaches that carriers provide rate and performance information. In contrast, amended independent claim 1 calls for performance information to be generated at a processor based on a monitored data transmission. *Mashinsky* does not perform this step.

Mashinsky (col. 8, lines 50-54) teaches that service-related information, such as transmission quality and reliability, is evaluated by a system that also determines the accuracy of the provided parameters. *Mashinsky* (col. 8, lines 61-63) states, “the evaluation is based on information about the services of the carriers previously stored at server node 56. Thus, *Mashinsky* teaches that service related information is pre-stored at a server. However, the service information is not obtained in accordance with the generating step recited in amended independent

claim 1. Rather, the service information is obtained from carriers pursuant to them providing their call rates to the system.

Mashinsky (col. 2, lines 30-31) teaches that rate-tables are derived by server node 56 from the collected rate information that list the cost of connecting any two locations within the telecommunication node network via various routes, and any service parameters associated with each route. However, *Mashinsky* teaches that all of the rate information is collected from carriers who enter this information prior to the placement of any calls. The claimed invention, in contrast, generates this performance information at a processor based on a monitored data transmission, as recited in independent claim 1. In view of the foregoing, Applicant respectfully asserts that amended independent method claim 1 is patentable over *Mashinsky*, and therefore reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) are respectfully requested.

Independent claim 3 is the system in which the method of independent method claim 1 is implemented. Accordingly, independent system claim 3 is patentable over *Mashinsky* for the reasons discussed above with respect to independent method claim 1.

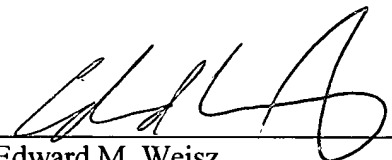
In view of the patentability of independent claims 1 and 3, for the reasons set forth above, dependent claims 2 and 4, as well as new dependent claims 5-16, are all patentable over the cited prior art.

Based on the foregoing amendments and remarks, this application should be in condition for allowance. Early passage of this case to issue is respectfully requested.

If any additional fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

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